



LEONIDAS RALPH MECHAM  
Director

**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

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**MEMORANDUM TO: JUDGES, UNITED STATES BANKRUPTCY COURTS  
BANKRUPTCY ADMINISTRATORS**

**SUBJECT: Bankruptcy Reform Act Effective Dates (IMPORTANT INFORMATION)**

As you know, on April 20, 2005, the President signed into law S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act (P.L. No. 109-8, 199 Stat. 23). Section 1501 of the act sets forth the general effective date as 180 days following enactment, which is October 17, 2005. However, several changes to the Bankruptcy Code contained in the act are effective immediately or are retroactively effective. In order to assist you, the following is a list of the exceptions to the general effective date:

- Section 324 explicitly extends court jurisdiction to matters pertaining to professionals employed in bankruptcy cases pursuant to 11 U.S.C. § 327. It states: "Applicability – This section shall only apply to cases filed after the date of enactment of this Act." It is unclear from subsection (b) whether the section is effective upon enactment, or follows the general effective date but is only applicable to cases filed after the enactment date.
- Section 325(d) regarding the distribution of bankruptcy filing fees is effective upon enactment. However, there were drafting errors in the legislation affecting distribution of the filing fees that preclude implementation of the fee changes. (The increase in fee amounts contained in Section 325(a)(1) is effective 180 days following enactment.) Delay in implementation of this section was the subject of a memorandum dated April 18, 2005, to all bankruptcy clerks from George Schafer, Assistant Director for Finance and Budget. A legislative fix of this fee distribution drafting error is included in H.R. 1268, the Emergency Supplemental Appropriations bill currently before Congress.
- Section 1001(a)(1) permanently reenacts chapter 12 of the Bankruptcy Code, effective July 1, 2005. Chapter 12 currently exists as a temporary chapter of the Code until June 30, 2005.

- Section 1003(c) is effective upon enactment and applies to cases commenced on or after that date. This section affects chapter 12 plans, including treatment of priority debts and certain priority debts owed to government units following the sale of a farm or farm assets (unsecured claim without priority if the debtor receives a discharge).
- Section 1213 is effective upon enactment and applies to pending cases as well as cases commenced on or after the date of enactment. This section overrules the *DiPrezio* rule regarding transfers for the benefit of insiders.
- Section 1221(d) amends §§ 363(d), 1129(a), and 541 of the Bankruptcy Code to require that the transfers made by nonprofit debtors comply with applicable non-bankruptcy law. This section applies upon enactment to pending cases as well as cases commenced on or after the date of enactment, **except** that the court may not confirm a plan under chapter 11 of the Bankruptcy Code without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the filing of the petition (act § 1221(d)).
- Section 1234 amends § 303 of the Bankruptcy Code concerning commencement of an involuntary bankruptcy case. It is effective upon enactment and applies to pending cases as well as cases commenced on or after the date of enactment.
- Section 1401 increases the wage priority cap from \$4,000 to \$10,000 and expands the look-back period from 90 to 180 days. This amendment is effective on the date of enactment and applicable to cases commenced on or after that date.  
(See §§ 1406(a), (b)(1) of the act.)
- Section 1402 amends § 548 of the Bankruptcy Code in two ways. First, the look-back period for transfer of an interest of the debtor in property is extended from one year to two years. This portion of § 1402 applies only to cases filed more than one year after the date of enactment of the law. (See § 1406(b)(2) of the act.)  
  
Secondly, § 1402 amends § 548 of the Bankruptcy Code to allow avoidance of certain transfers to or for the benefit of insiders under employment contracts not in the ordinary course of business. These amendments are effective upon the date of enactment of the law and apply to cases filed on or after the date of enactment. (See §§ 1406(a), (b)(1) of the act.)
- Section 1403 amends § 1114 of the Bankruptcy Code regarding reinstatement of retiree benefit plans. This section is effective upon enactment and is applicable to cases commenced on or after that date. (See §§ 1406(a), (b)(1) of the act.)

- Section 1404 amends § 523(a)(19) of the Bankruptcy Code, added by the Sarbanes-Oxley act in 2002, excepting from discharge certain debts relating to securities fraud. Pursuant to § 1404(b), this section is retroactively effective as of July 30, 2002 (the date Sarbanes-Oxley was enacted). Note, however, that § 1406 of the act setting forth the effective date for Title XIV of the act (§§ 1401 - 1406) as the date of enactment conflicts with § 1404(b).
- Section 1405 is effective on the date of enactment and applies to cases commenced on or after that date. This section requires the U.S. trustee to move for appointment of a trustee when there are reasonable grounds to suspect fraud, dishonesty, or criminal conduct on the part of certain corporate officials.
- Section 1501(a) sets forth the general effective date of the act 180 days after enactment (October 17, 2005). Section 1501(b)(1) states that unless otherwise provided, the act does not apply to cases commenced before the effective date.
- Section 1501(b)(2) provides several exceptions to the general effective date. It states that § 308 (reduction of homestead exemption for fraud – with a 10 year look-back period), § 322 (homestead exemptions), and § 330 (delay of discharge) are all effective as of the date of enactment.

If you have any questions about the effective dates for the act or need further guidance, please contact Frank Szczebak, Chief, Bankruptcy Judges Division at (202) 502-1904 or by email at *Frank.Szczebak/DCA/AO/USCOURTS*.

A handwritten signature in black ink, appearing to read "Leonidas Ralph Mecham". The signature is fluid and cursive, with the first name "Leonidas" being more prominent and the last name "Mecham" following in a similar style.

Leonidas Ralph Mecham

cc: Clerks, United States Bankruptcy Courts